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In The
Supreme Court of the United States

OCTOBER TERM, 1980

No.

ALLEN B. SPECTOR,
MAURICE R. WYATT,
DONALD H. NOREN,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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QUESTIONS PRESENTED

1. Whether this Court's decision in Russell v. United States requiring that when indictments are couched in the generic terms of a statute, a defendant is entitled to be apprised of the specific charges against him upon request, applies to the States, and therefore, the refusal of the trial court to grant Defendants' demands for particulars requesting disclosure of the specific official duty(ies) or act(s) of Donald Noren which Maurice Wyatt and Allen B. Spector sought to influence constituted a denial of their fundamental due process and procedural rights under the Fifth, Sixth and Fourteenth Amendments to the U. S. Constitution and Article 21 of the Maryland Declaration of Rights.

2. Whether fundamental due process required the State, in order to sustain a conviction for bribery pursuant to Article 27, Section 23 of the Annotated Code of Maryland, to

prove the official duty(ies) or act(s) of Defendnt Noren, which Defendants Wyatt and Spector allegedly influenced or sought to influence by the payment of the alleged bribe.

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The Petitioners, Allen B. Spector, Maurice R. Wyatt, and Donald H. Noren, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of Maryland entered on January 22, 1981.

OPINION BELOW

The Judgment and Opinion of the Court of Appeals of Maryland entered on January 22, 1981, which is presently reported at 425 A.2d 197 is set forth in the Appendix (pp. 1-46).

JURISDICTION

Jurisdiction to review the judgment entered by the Court of Appeals of Maryland on January 22, 1981, is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent text of the United States Constitution, Amendments V, VI and XIV, §1; Maryland Declaration of Rights, art. 21; 28 U.S.C. §1257(3); MD. CODE ANN., art. 27, §23 (Supp. 1980); 18 U.S.C. §201(c)(1); 18 U.S.C. §201(g); W. VA. Code 61-5A-3(1977), are set forth in the Appendix (pp. 47-59).

STATEMENT OF THE CASE

The facts developed at trial were uncontroverted. Claiming the State had not proved a case, none of the Defendants put on a case, but chose to rest after the State's case.

On September 13, 1973, May 14, 1974, and May 24, 1974, Dr. Neil Solomon, Secretary of Health and Mental Hygiene, issued orders

effecting a moratorium on hook-ups into sewer systems. Samuel Gorn, Richard Davison, and Bernard Rome were all developers adversely affected by the moratorium as it applied to the Gwynns Falls drainage basin in Baltimore County, Maryland. They all sought relief from the Department's Board of Review in the form of exceptions from the moratorium.

At all relevant times, the Defendants were engaged, at least part of the time, in the private practice of law in Baltimore City.[1/] Defendant Noren also held a position as an Assistant Attorney General and was assigned to represent the Environmental Health Administration before the Board of Review on the question of exceptions from the moratorium. He was responsible for representing Dr. Solomon's position in favor of the moratorium.

1/ Allen B. Spector was a member of the Baltimore County Council, and subsequently qualified as a judge of the District Court of Maryland on June 22, 1977. Maurice R. Wyatt served as the Appointments Secretary to Governor Marvin Mandel. Donald H. Noren was Mr. Wyatt's partner in the law firm of Della and Wyatt.

Each of the developers retained Defendant Spector for assistance, and paid fees of $10,000 (Gorn), $5,000 (Davison), and $5,000 (Rome) to Defendant Spector and the law firm in which he was a partner, then known as Spector, Zerwitz and Kirk. Defendant Spector shared these fees with Defendant Wyatt, who worked on each of these cases with Defendant Spector, by sending him checks drawn on the firm account in the respective amounts of $5,000 (Gorn), $3,000 (Davison), $1,600 (Rome) and $1,700 (Rome).[2/] Defendant Wyatt subsequently shared each of these fees evenly with his partner, Defendant Noren.

At the hearings for each of the developers before the Board of Review, Defendant Spector never appeared as opposing counsel to Defendant Noren. Further, numerous developers received relief by way of exceptions from the Board of

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2/ The fee from developer Rome was paid in two $2,500 installments, the first after a hearing was obtained before the Board of Review, and the second upon obtaining successful relief from the moratorium.

Review on the same days relief was granted to developers Gorn, Davison and Rome. In fact, Dr. Solomon was "up in arms and very discouraged" because the Board of Review was granting such wholesale and sweeping relief to developers that it was tantamount to overruling his moratorium order. Despite his disturbance at the Board's regularly granting this hardship relief to developers, he recognized and testified that the builders were treated by the Board pretty much on an equal basis.

Throughout this tumultuous period marked by frequent newspaper articles and heated community debate, Defendant Noren impressed his colleagues and superiors alike as responsible and fair in all cases before the Board, giving no developer special treatment. Indeed, no one observed any improper, illegal or immoral behavior by Defendant Noren, and all developers were treated equally.

Nonetheless, indictments were sought by the State and eventually returned by the Grand

Jury of Baltimore City charging Defendants Spector and Wyatt with illegally paying money to Defendant Noren "for the purpose of influencing him in the performance of his official duties in violation of Article 27, Section 23, Annotated Code of Maryland." This statute provides, in pertinent part, that if any person shall bribe or intend to bribe any officer or employee of the State "in order to influence any such officer or person in the performance of any of his official duties . . ." or if any officer of the State "shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons and any such officers or persons so demanding or receiving any bribe, fee, reward or testimonial shall be deemed

guilty of bribery." (App. 55) The indictments were couched in the generic terms of this statute.

On January 16, 1980, prior to entering a plea of not guilty in the indictments, Defendants, Spector, Wyatt and Noren, filed Demands for Particulars to each of the indictments pertaining to him. (E. 1, 3). [3/]

The first item requested in the Bills of Particular was:

> The specific official duty(ies) or act(s) of Donald H. Noren, which the defendant allegedly influenced or sought to influence by the payment of the alleged bribe. (E. 3)

The second item was:

> The specific influence, which the payment of the aforesaid bribe had or was intended to have upon the official duties of Donald H. Noren. (E. 3)

On January 30, 1980, the State filed "State's Answer to Defendant's Demand for Par-

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[3/] Since all pleadings relating to particulars were filed by all Defendants but at different times, collective reference to them will be made herein since identical issues were raised in each. All references are to specific portions of the record extract as required by Rule 21.1.(h) of this Court.

ticulars," wherein the State took exception to the Demand for Particulars on the ground that the demand was outside the "proper use of Maryland Rule 730." (E. 6)

Upon receipt of the State's Answer, the Defendants, on February 4, 1980, filed exceptions to the State's refusal to answer Defendants' Demand for Particulars. (E. 8)

On April 25, 1980, Judge Perrott conducted a pre-trial hearing on the issue of the Defendants' request for Particulars. During that hearing Judge Perrott posed the following question:

> "Why shouldn't the defendant know the official duties or acts of Noren which were sought to be influenced? I don't understand the State's reluctance to disclose that." (E. 12-13)

The Court opined that Item #1 of Defendants' request for particulars, namely the request for the State to identify the specific duty or act of Noren which Spector allegedly influenced or sought to influence, was properly

discoverable by a bill of particulars, and instructed the State to "thoroughly answer Question One." (E. 15)

After this hearing, the State, on April 28, 1980, filed "State's Amended Answer to Defendants' Demand for Particulars. This response provided as follows:

> 1. Part of the duties of Donald H. Noren, as an Assistant Attorney General assigned to the Department of Health and Mental Hygiene was to represent that department before the Board of Review which determined whether grounds existed upon which to base the granting of exceptions to any moratorium handed down by the department. It was Mr. Noren's duties before the Board of Review that Mr. Spector and Mr. Wyatt influenced or sought to influence. (E. 16) (Emphasis added.)

On April 29, 1980, Defendants filed Exceptions to the State's Amended Answer, stating that the Answer was not responsive, did not comply with the letter or spirit of the Court's ruling of April 25, 1980, and did not provide sufficient particulars to enable the Defendants to understand the alleged offense committed.

(E. 19) A hearing concerning these Exceptions was conducted on April 30, 1980. Judge Perrott made the following ruling in a written opinion:

> "It is the opinion of this Court that the State should include in the answer the particular responsibilities Mr. Noren had with reference to the Board of Review which are relevant to the charges in this case. Without this information, the preparation of the defendants' case might be unduly prejudiced; however, it should be noted that the Court is not requiring the State to disclose the specific transaction on which Mr. Noren was allegedly paid to act for the benefit of Defendants Spector and Wyatt. Only an enumeration of Mr. Noren's responsibility involved in the instant charges, not a description of the particular actions Mr. Noren was allegedly to have engaged in, must be disclosed by the State in its answer to the Demand for Particulars." (E. 21). (Emphasis added.)

On May 1, 1980, the State filed State's Second Amended Answer to Defendants' Demand for Particulars, saying:

> 1. That the duties of Donald H. Noren as an Assistant Attorney General for the State of Maryland assigned to the Department of Health and Mental Hygiene include, but are not limited to:

a) representing the Department as counsel before the Board of Review;
b) preparing Stipulations of Fact to be presented before the Board of Review;
c) meeting with aggrieved parties of moratoriums or their counsel;
d) aiding in the preparation of disputes presented before the Board of Review; and
e) arguing for the enforcement of all applicable sections of Article 41 of the Annotated Code of Maryland and the Rules of Procedure of the Board of Review. (E. 22)

On May 2, 1980, Defendants filed Exceptions to the State's Second Amended Answer to Defendants' Demand for Particulars, stating:

> "The demand requests that the State disclose what specific official duty(ies) of Donald H. Noren was allegedly influenced or sought to be influenced. The response merely enumerates some and not all of Mr. Noren's duties. The response does not indicate which of these duties was allegedly influenced. The response infers that there are other duties not listed therein, which may be relevant at trial.
>
> Defendants are entitled to know precisely which official

> duty(ies) of Noren's was influenced or sought to be influenced. The nondisclosure of the information requested subjects the Defendants to surprise, prejudice and an inability to properly prepare their defense. . . ." (E. 25)

On May 5, 1980, Judge Perrott again conducted a hearing on the Defendants' Request for Particulars, and issued a written ruling on that same date, which provided as follows:

> 1. The State is hereby ordered to strike the words "but are not limited to" in paragraph one of the Amended Answer;
>
> 2. The defendants' exception to the State's Amended Answer is otherwise overruled. The Court finds that the defendants are not entitled to any further particularization of duties of Mr. Noren which the defendants Wyatt and Spector, allegedly sought to influence in this case. (E. 28)

Thereafter, Defendants again attempted to obtain this information, which they considered essential in order to prepare a proper defense, by filing a Supplemental Motion for Discovery, which the Court denied on June 2, 1980. (E. 29)

Trial commenced before Judge James Macgill on June 5, 1980. During the course of trial, defense counsel several times communicated what they believed to be prejudice and surprise as a result of their not obtaining the particulars, including during a Motion for Judgment of Acquittal:

> ". . . [F]rom the very beginning of the case, the Defendants have asked, pleaded, almost wore out their welcome before the Court, in asking . . . for the specific act . . . [H]ow can a defense go forward when we don't know . . . ." (E. 232)

During closing argument, the State, for the first time, identified the alleged acts which Noren either committed or attempted to commit. With regard to the first charge of bribery involving Samuel Gorn, the State said:

> "That is, in fact, exactly what he did. He [Noren] got Sam Gorn before the Board on the first possible day." (E. 238)

With regard to the second charge of bribery involving a Richard Davison, the State said:

> ". . . [O]n October the 22nd, 1974, an executive session is held. An executive session again, is a meeting whereby the Board of Review determines what they will do in a particular case which they already heard.
>
> Mr. Davison's case comes up. Mr. Noren has not done anything, Your Honor. He has not done a thing to prevent this from occurring. What happened? He is granted relief. He is granted the relief he wants. What facts have changed, Your Honor, between the date of the first hearing and the second hearing and August and October the 22nd? Not a thing. The facts are exactly the same on this day as they were over a month and a half ago, but today he gets what he wants." (E. 241)

The State inferred that Noren directly influenced the Board.[4/] Later in rebuttal, the State argued that Noren could have filed a mandamus action to prevent Davison from obtaining his relief, suggesting that this

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4/ The trial court discussed the defense's objections to this line of argument during colloguy at the Bench after the State's closing argument, (E. 248), and in its Memorandum and Order denying the new trial motions (E. 60), concluding that the State had wide latitude in which to argue inferences to be drawn from the evidence.

was Noren's impropriety. With regard to Bernard Rome, the State argued that Rome was frustrated and unable to have stipulations approved, or obtain a hearing before the Board, and thus contacted Spector. Following closing argument, defense counsel approached the bench and again reiterated the problem concerning particulars:

> " . . . [T]he cat is out of the bag . . . [W]hat I'm suggesting is that when we asked for particulars, time and time again we meant that in order to understand the charges against us, in order to prepare a defense, in order to appropriately and properly question witnesses, that we had no way -- we had to know what the State was claiming that Noren did wrong. If we didn't have that information, we were shadow boxing. This is the first instance that I have observed a specific act suggested, for example, with regard to Noren. I'm finally hearing, Noren influenced the Board, that Noren didn't act vigorously at the Board hearings. These are important points that defense had a right to know earlier." (E. 246-247)

The three Defendants were convicted of three separate charges of bribery on June 20, 1980. In finding the Defendants guilty, the

Court stated that it did not find any act in fact performed by Noren for payment of the alleged bribe.

After the Court pronounced the verdict, the Court asked for any comment. Defense counsel requested the Court state for the record what act Noren intended to do for taking the money. The Court responded:

> "Well, intention of course in accepting is locked in the minds of people who accept bribes." (E. 46)

Defendants filed a Motion for New Trial again raising the issue that the State failed to provide sufficient particulars to properly prepare a defense, but said Motion was denied.

Each of the Defendants was sentenced on July 21, 1980, to two years in the care of the Department of Correction on each of the indictments. Sentence was suspended in each instance and each Defendant was placed on two years unsupervised probation. Additionally, a $5,000 fine was levied on each of the indictments as to each Defendant.

A timely appeal was noted to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland then issued its writ of certiorari ex mero motu to "expedite the ultimate disposition of the proceedings" since that Court had already suspended each of the Defendants from the practice of law.

REASONS FOR GRANTING THE WRIT

I.

WHEN INDICTMENTS ARE COUCHED IN THE GENERIC TERMS OF THE STATUTE, THE TRIAL COURT'S FAILURE TO REQUIRE THE STATE TO DISCLOSE PARTICULARS OF THE SPECIFIC OFFICIAL DUTY(IES) OR ACT(S) OF DONALD NOREN WHICH DEFENDANTS WYATT AND SPECTOR SOUGHT TO INFLUENCE CONSTITUTED A DENIAL OF THEIR DUE PROCESS AND PROCEDURAL RIGHTS UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE U. S. CONSTITUTION AND ARTICLE 21 OF THE MARYLAND DECLARATION OF RIGHTS AND DENIED THEM ANY MEANINGFUL OPPORTUNITY TO DEFEND.

No right of an accused is more important than the right to have fair notice of the charges against him. In Cole v. Arkansas, 333 U.S. 196, 201 (1948), this Court recognized the inviolability of this right:

> "No principle of procedural due process is more clearly estab-

> lished than that notice of a specific charge, and the chance to be heard in a trial of the issues raised by that charge, if desired are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal."

Indeed, the right to be apprised of the charges against the accused is a fundamental right protected by the Fifth Amendment right to "due process," and the Sixth Amendment right to be "informed of the nature and cause of the accusation," under the United States Constitution, both being applicable to the States through the Fourteenth Amendment. See, Herring v. New York, 422 U.S. 853, 856-857 (1975); Faretta v. California, 422 U.S. 806, 818 (1975). It is a "premise that has never been doubted in our constitutional system" that one cannot be convicted of a criminal offense "without notice and a meaningful opportunity to defend." Jackson v. Virginia, 443 U.S. 307, 314 (1979). Furthermore, this fundamental right has been expressly adopted by the people of Maryland in Article 21 of the Declaration of Rights, (App.

48), requiring such notice of the charge as will enable the accused to prepare a defense, and serve to prevent future prosecution for the same offense. State v. Canova, 278 Md. 483, 498 (1976); Corbin v. State, 237 Md. 486, 490 (1965); Ayre v. State, 21 Md. App. 61, 63 (1974).

In Russell v. United States, 369 U.S. 749, 765 (1962), the Court, quoting from its previous opinion in United States v. Cruikshank, 92 U.S. 542 (1876), established the following standard applicable in this case:

> "It is an elementary principal of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, 'includes generic terms,' it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species, it must descend to particulars."

Mr. Justice Stewart, speaking for the Court, ruled that "[a]n indictment not framed to apprise the defendant with reasonable certainty, of the nature of the accusation against him

is defective, although it may follow the language of the statute." 369 U.S. at 765.

Recently, in United States v. Conlon, 628 F.2d 150 (D.C. Cir. 1980), Senior Circuit Judge Bazelon specifically acknowledged the soundness of Russell in ruling that indictments utilizing the language of the statute must be supplemented in enough detail to apprise the accused of the particular offense with which he is charged. In that case, Judge Bazelon offered by way of footnote, the following thoughts:

> "The author of the opinion, speaking only for himself, notes in the literature a growing awareness of the need for openness by the Government and criminal prosecutions. Laying aside entirely the question whether it is constitutionally required a significant movement toward greater disclosure is taking place. State statutes have required it, trial judges are invoking the discretionary powers to effect it, and a growing number of prosecutors have made it standard practice. . . . A criminal trial is not 'a game or a

> sporting contest,' but 'a serious inquiry aiming to distinguish between guilt and innocence.'" 628 F.2d at 155-156, note 31.

It follows that the same policy and underlying constitutional requirement must, necessarily, apply to the furnishing of particulars. Indeed, the function of bills of particulars in a criminal case is precisely what this Court sought in Russell; that is, that the defendant be apprised with reasonable certainty of the nature of the accusation.

As made clear previously in the Statement of the Case, Defendants' counsel tried repeatedly to obtain particulars, especially disclosure by the State of the specific official duty(ies) or act(s) of Defendant Noren which Defendants Wyatt and Spector sought to influence. Judge Perrott, at first, seemed to appreciate the plight of the Defendants and ordered the State to divulge this information. However, when the State ultimately responded with a virtual shopping list of Noren's duties

including "arguing for all applicable sections of Article 41 of the Annotated Code of Maryland and the Rules of Procedure of the Board of Review," Judge Perrott refused to compel the State to specify further.

The State's behavior assumed a more odious dimension as the trial unfolded. After repeated requests during trial by Defendants' counsel for the particulars described herein which were met by the State's response that it could have been any of Defendant Noren's duties, the State then revealed for the first time during closing argument the specific duties or acts of Defendant Noren which he allegedly performed or failed to perform.

Defendants respectfully submit that this failure of being apprised with reasonable certainty of the nature of the charge against each of them is constitutionally impermissible, deprived them of a meaningful opportunity to defend, and accordingly, requires the grant of certiorari to the Court of Appeals.

There is, moreover, an additional ground for granting the instant Petition, which is the conflicting applications given to Russell by the States.

In Cunningham v. State, 190 Md. 578 (1948), the Court of Appeals held that the language of an indictment for bribery is sufficient if laid in the words of the statute, then Article 27, Section 27, Annotated Code of Maryland, 1939 Edition. There, the appellant's contention that the indictment was too general and prevented preparation of a proper defense and reliance upon many authorities including United States v. Cruik-supra, was unavailing.

In State v. Hazellief, 148 So.2d 28 (Fla. App. 1962), however, the District Court of Appeal affirmed the dismissal of bribery informations which failed to state the particular act, rule or regulation which the State public employees were to have performed or executed, and which the

State expected to prove they violated. There the court relied on Russell v. United States, supra, quoting at length, for the proposition that although the language of the statute may be used in the general description of the offense, it must be accompanied with a statement of facts to inform the accused of the specific offense with which he is charged.

The principles underlying Russell are rooted in the fundamental right to notice of charges and to a meaningful opportunity to defend consistent with due process requirements of the Fourteenth Amendment, and thus, certiorari should be granted to resolve the conflicting interpretations by the States.

II.

FUNDAMENTAL GUARANTEES OF DUE PROCESS REQUIRE THAT THE STATE PROVE THE OFFICIAL DUTY(IES) OR ACT(S) OF DEFENDANT NOREN WHICH DEFENDANTS WYATT AND SPECTOR ALLEGEDLY SOUGHT TO INFLUENCE IN THAT IT IS THE ESSENTIAL ELEMENT OF QUID PRO QUO THAT DISTINGUISHES THE SPECIFIC CRIMINAL INTENT UNDERLYING BRIBERY FROM THE MENS REA OF OTHER RELATED CRIMES, SUCH AS ACCEPTING AN UNLAWFUL GRATUITY.

In Kable v. State, 17 Md. App. 16, 23 (1972), the Maryland Court of Special Appeals defined bribery in explicitly approving a particular jury instruction as follows:

> "There must be an offer of something of value to a public officer or official with the intention that this thing of value influenced him in the performance of his official duties, and the thing of value must be received by the public official with the intention that by receiving it he will be influenced in the performance of his public duty."

The definition of bribery, therefore, requires intention. Intention in this instance requires a showing of a specific act or specific subject matter of the intended influence. Indeed, Judge Orth said in Canova v. State, 278 Md. 483, (1976), that Art. 27, §23 is not more inclusive than common law bribery, but instead is "declaratory of the common law," and as such, embodies the basic elements of the common law. Inherent in the crime of bribery at common law was the element of quid pro quo, as is embodied in the jury instruction approved in Kable.

Federal decisions have recognized the difference between the intent required to be proven for bribery and that for receiving illegal gratuities.

In United States v. Brewster, 506 F.2d 62 (D.C. Cir. 1974), a former Maryland U. S. Senator Daniel Brewster was indicted for bribery and convicted for receiving illegal gratuities. On appeal of that conviction, Judge Wilkey, speaking for the D. C. Circuit, differentiated between the two crimes, and articulated the higher standard of proof of intent required for bribery. The applicable federal bribery statute, 18 U.S.C. §201 (c)(1), defines bribery by a public official as follows:

> "Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official or offers or promises any public official or any person to give anything of value to any other person or entity, with intent to influence any official act."

The gratuity section, 18 U.S.C. §201(g), defines acceptance of a gratuity in this language:

> "Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him."

The Court held that the bribery section implies "a higher degree of criminal intent," and "makes necessary an explicit quid pro quo which need not exist if only an illegal gratuity is involved." 506 F.2d at 71-72. Thus, to demonstrate the requisite criminal intent for bribery, there must be an explicit showing of what was to be done in exchange for the thing of value.

Because most state bribery statutes, like Maryland's, employ language similar to the federal statute's phraseology, "with intent to influence any official act," and because

state bribery statutes are also "directed against impairment of the actual and apparent integrity of public life," the Brewster distinction, between the specific intent required for bribery as opposed to the lesser offense of acceptance of a gratuity, is equally applicable in a state context.

One of the most compelling applications of Brewster to a state statute was authored by the Fourth Circuit in considering the West Virginia bribery law.[5/] United States v. Arthur, 544 F.2d 730 (4th Cir. 1976), involved the appeal of a criminal conviction for misapplication of bank funds for the payment of bribes to public officials and the making of illegal campaign contributions. In reversing the conviction, the Court held that there had been a failure to properly distinguish bribery and goodwill expenditures. In the opinion, Judge Russell ruled that bribery requires an intended specific exchange,

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5/ W. VA. CODE §61-5A-3 (1977). (App. 58).

and a general expectation of benefit is not sufficient:

> "Not every gift, favor or contribution to a government or political official constitutes bribery. It is universally recognized that bribery occurs only if the gift is coupled with a particular criminal intent. That intent is not supplied merely by the fact that the gift was motivated by some generalized hope or expectation of ultimate benefit on the part of the donor. 'Bribery imports the notion of some more or less specific quid pro quo for which the gift or contribution is offered or accepted.'" 544 F.2d at 734. (Citations omitted.)

In view of this requisite criminal intent, the Court found that it was error to instruct the jury that "payment of money to government officials for the purpose of obtaining deposits of government funds in the bank and to influence the judgment of such officials in connection with such deposits constitutes bribery," stating:

> "If 'influence' is given its broadest meaning, it is clear that 'goodwill' gifts and favors to and entertainment of government officials are intended to influence the judg-

> ment of such officials. That is, such expenditures are made with the hope that the officials will be more likely to award government business to the donor if a favorable business climate is created than if such a climate is not established. But, as is apparent from the discussion above, this type of influence does not amount to bribery." 544 F.2d at 735.

The trial court, in not requiring the State to disclose and prove the specific act which Defendants Spector and Wyatt sought to influence Defendant Noren to perform or forego, overlooked the importance of the specific intent necessary to constitute bribery. Moreover, Judge Smith's statement for the Court of Appeals (App. 36) that the Maryland bribery statute and federal bribery statute contain no marked difference coupled with the Court's previous holdings approving the jury instruction in Kable and stating that the subject statute embodies the common law, amount to a violation of the fundamental fairness and guarantees of due process of law under the Fourteenth Amendment when the Court of Appeals attempts to now

expand the definition and scope of the statute to include behavior beyond that which constituted bribery at common law.

CONCLUSION

For the reasons stated, the Petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE COURT OF APPEALS
OF MARYLAND

No. 61

September Term, 1980

ALLEN B. SPECTOR, MAURICE R. WYATT
and DONALD H. NOREN

v.

STATE OF MARYLAND

Smith
Cole
Singley, Frederick J., Jr.
(ret'd, specially assigned)
Orth, Charles E., Jr.
(ret'd, specially assigned)
Morton, James C., Jr.
(specially assigned)
Thompson, C. Awdry
(specially assigned)
Weant, Edward O., Jr.
(specially assigned),

JJ.

Opinion by Smith, J.

Filed: January 22, 1981

We shall here affirm the judgments entered against Allen B. Spector, Maurice R. Wyatt, and Donald H. Noren on three charges of bribery in violation of Maryland Code (1957, 1976 Repl. Vol., 1980 Cum. Supp.) Art. 27, § 23.[1]

i. Background

On September 13, 1973, May 14, 1974, and May 24, 1974, the Secretary of Health and Mental Hygiene issued orders effecting a moratorium on connections of sewers for new buildings in certain areas of Baltimore County. Samuel Gorn, Richard Davison, and Bernard Rome were developers adversely affected by the moratorium. They sought relief from the Board of Review of the Department of Health and Mental Hygiene in the form of exceptions to the moratorium.

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1 The incidents in question took place in 1974 and early 1975. Thus, it would be the law as it existed then which would be applicable. Changes since that time have no effect upon the portion of the statute relative to this proceeding.

Spector, Wyatt, and Noren are members of the bar. At the times here relevant Noren was an Assistant Attorney General of Maryland whose duties included representation of the Environmental Health Administration, a part of the Department of Health and Mental Hygiene, in the matter of such exceptions before the Board of Review. Spector and Wyatt were practicing lawyers in Baltimore City.[2] Spector was a member of the Baltimore City Council.

Three indictments were returned against Spector, Wyatt, and Noren by the Grand Jury of Baltimore City. The first count of the first indictment charged that Spector and Wyatt "on or about September 5, 1974, . . . did unlawfully, willfully, and corruptly pay a bribe, reward, fee, and testimonial, to wit: two thousand five hundred dollars . . . to Donald H. Noren, being then and there an Assistant Attorney General for the State of Maryland . . . for the purpose of influencing him in the per-

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2 Spector qualified as a judge of the District Court of Maryland on June 22, 1977.

formance of his official duties in violation of Article 27, Section 23, Annotated Code of Maryland. . . ." The second count charged Noren with having on the same day "unlawfully, willfully and corruptly receive[d] a bribe" in that amount from Spector and Wyatt "in the performance of his official duties" in violation of Art. 27, § 23.

The second indictment in similar language charged Spector and Wyatt with having paid a bribe to Noren in the amount of $1,500 on October 27, 1974. It likewise charged Noren in language similar to the first indictment with having received that sum at that time.

The third indictment in similar language charged that on February 10, 1975, Spector and Wyatt paid the sum of $1,650 to Noren as a bribe. It likewise charged Noren with receiving such an amount as a bribe at that time.

The statute in question, Art. 27, § 23, provides in pertinent part:

> If any person shall bribe or attempt to bribe . . . any officer or employee of the State . . . in order to in-

> fluence any such officer or person in the performance of any of his official duties; and if . . . any officer or any employee of the State . . . shall demand or receive any bribe . . . for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any of such officers or persons, and every such person so demanding or receiving any bribe . . . shall be deemed guilty of bribery. . . .

The defendants elected a court trial. The case was heard in the Criminal Court of Baltimore by Macgill, J.[3]

Each of the defendants was sentenced to two years in the care of the Department of Correction on each of the counts. Sentence was suspended in each instance and each defendant was placed on two years unsupervised probation. In addition, a fine of $5,000 on each

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[3] Pursuant to Constitution of Maryland Art. IV, § 3A and Maryland Code (1974, 1980 Repl. Vol.) § 1-302, Courts and Judicial Proceedings Article, Judge Macgill, former Chief Judge of the Fifth Judicial Circuit, was recalled from retirement and assigned to try this case.

of the three counts was levied on each of the defendants.

An appeal was promptly noted to the Court of Special Appeals. Since pursuant to Maryland Rule BVI6 we had suspended each of these attorneys from the practice of law by reason of these convictions, we issued a writ of certiorari ex mero motu to the Court of Special Appeals because a by-pass of that court would expedite the ultimate disposition of these proceedings.

ii. Appellants' contentions

The appellants claim (1) that since each of the indictments was "couched in [the] generic terms of the statute, alleging payments to 'influence official duties', [they] were denied apprisal of the specific charges against them, guaranteed by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and Article 21 of the Maryland Declaration of Rights, when the trial court did not grant demands for bills of particular, which requested disclosures of the specific official duty(ies)

or act(s) of Noren which Wyatt and Spector allegedly sought to influence"; (2) that in order to sustain a conviction of bribery pursuant to Art. 27, § 23 "the State must prove the specific official act(s) or duty(ies) of Noren, which Wyatt and Spector allegedly sought to influence, in that it is the essential element of quid pro quo that distinguishes the specific criminal intent underlying bribery from the mens rea of other related crimes, such as accepting an unlawful gratuity," which it is contended the State failed to do; (3) that if, "assuming arguendo the State is not required to prove the specific act sought to be influenced, there was [no] legally sufficient evidence of a corrupt agreement to sustain a conviction of bribery"; and (4) that the trial court failed to comply with Rule 735 "when it did not fully apprise Defendants of their right to trial by jury on the first day of trial, although such advice was rendered during a pre-trial proceeding."

iii. The facts

The trial judge said from the bench in making his findings of fact:

> I must reach my conclusions on the evidence whether by way of testimony, or by way of documents which have been admitted for my consideration.
>
> As the State has said in this case the evidence, or these cases, there are three of them being tried together in effect, the evidence it relies on to establish these cases is circumstantial.
>
> Circumstantial evidence is not weaker, or of a lesser quality than other kinds of evidence. In these cases, and as I said before, these cases have been consolidated for trial, the evidence establishes beyond a reasonable doubt, and I do not think that it is even disputed, that Mr. Noren, at the time of the incidents described, was an officer or employee of the State, an Assistant Attorney General. I think that the evidence also, in each case, establishes beyond a reasonable doubt, that Mr. Noren received payments of money which were derived from the three applicants or developers who testified, and that he received these payments from Mr. Wyatt and these payments were part of the sums received by Judge Spector, as fees from each of the applicants. So, in each case, Mr. Noren, the public official, received something of value derived

from the matters pending before the Department which he represented. These facts, of course, do not make him guilty of bribery, nor do they make Judge Spector or Mr. Wyatt guilty of bribery. To find one or more of these defendants guilty of bribery it must be established beyond a reasonable doubt that the moneys were paid and received pursuant to a corrupt agreement. The State contends that various incidents described in the evidence show, circumstantially, that there was such a corrupt agreement in each instance.

* * *

Before detailing the circumstantial evidence in these cases, on which, as I understand it, the State is relying, I should point out that in these cases, as in others, each specific incident or detail, in itself, cannot be considered separately. All incidents or details, considered cumulatively, are what matter.

Each of the three associations, or what I will call developers, and I will refer to them by the names of the parties who testified as their representatives, the evidence shows were placed in serious or desperate financial straits by the imposition of the sewer hook-up moratorium on May 14, 1974. According to the evidence each day the moratorium remained in effect as to them their financial conditions worsened. The first two, Mr. Gorn and Mr. Davison, engaged lawyers who resorted to orthodox legal proceedings to get relief for their clients. Colonel Rome tried the same avenues on his

own. The first two, without abandoning the counsel they had retained, turned in addition to Judge Spector. None of the three, I think it is significant to say, could recall precisely who referred Judge Spector's name to them. Mr. Gorn, if you believe this part of his testimony, retained Judge Spector simply to keep him posted as to what was going on. Peculiarly, however, according to Mr. Gorn, he retained Mr. Spector on a contingent fee basis, contingent on his securing relief from the moratorium and while seeking of that relief was in the hands of other counsel. Judge Spector labeled this fee an "annual retainer." Mr. Davison went to see Judge Spector because he felt that since Judge Spector was a city councilman, "He knew his way around in the bureaucracy and could expedite things." Colonel Rome was advised that a stipulation had to be prepared with Mr. Noren before he could get a hearing. He testified that he had difficulty getting together with Mr. Noren. Finally, he retained Judge Spector. He made a kind of contingent fee arrangement with Judge Spector, of the five thousand dollar fee requested by Judge Spector, he agreed to pay $2500.00 after he received a hearing before the Board of Review and the remaining $2500.00 only if the Board granted him the relief which he sought. Of course when I refer to "the Board" I am referring to the Board of Review.

Rather promptly, after his clients met with success and after he was paid the agreed fees, Judge Spector paid a portion of them to Mr. Wyatt

and Mr. Wyatt in turn, and just as promptly, paid a portion of his portion over to Mr. Noren. It is of some significance, I think, that the amounts paid to Mr. Wyatt went into his personal account and from that account he paid Mr. Noren who deposited his portions in his personal account. I think that it is also of some significance that Judge Spector's files, aside from the stipulation prepared for Colonel Rome, contain, so far as I could observe, no lawyer's work product done by him, nor any evidence of any work done for him by Mr. Waytt. I should also mention that State's Exhibit 38A and 38B show that the check for $1600.00 issued by Judge Spector to Mr. Wyatt was labeled "Referral-Butterfield case." Butterfield, as you will recall, was a case which involved a personal injury claim and with which Mr. Wyatt had no connection whatsoever. Likewise, State's Exhibits 43A and 43B show that the check in the amount of $1700.00, issued by Judge Spector to Mr. Wyatt was labeled, "Referral fee." That was by the secretary, as I recall. Although it does not appear from the testimony that Mr. Rome who paid the fee to Judge Spector, he never had contact with Mr. Wyatt.

I believe that it was suggested to me in closing argument that I should not consider anything as to which there was no proof, specifically that Mr. Noren, Mr. Wyatt's partner, knew the source of the payments remitted to him by Mr. Wyatt. I think that I, like a jury, may use my common sense and experience in life in evaluating evidence and on that basis it is difficult for me to believe that persons

dealing in commercial transactions, much less partners and friends, transfer substantial sums of money to each other without either explanation or inquiry. A reasonable inference, from the evidence, I think would be otherwise. It was also urged that the State should have made out a better case by calling some of the members of the Board of Review to show that Mr. Noren, in his relations with that body, did or did not do anything untoward, or something untoward, I should say. Of course, my role is not to demand that the State produce certain elements of proof but it is simply to evaluate the proof which the State does produce.

It was also suggested that persons engaged in bribery are not so foolish as to use checks and other documents but would resort to cash transactions. I can only say, from my observation persons engaged in dubious activities are just as prone to blunder as persons engaged in legitimate activities.

It has been said as to circumstantial evidence that before a verdict of guilty is justified, the circumstances taken together must be inconsistent with, or such as to exclude, every reasonable hypothesis or theory of innocence. I find here no reasonable hypothesis or theory of innocence when I consider the circumstances I have mentioned as well as others in evidence which I have considered, but may not have mentioned. In the light of all of the circumstances, taken together, I find in each case, beyond a reasonable doubt, that the moneys which passed from Judge Spector

> through Mr. Wyatt to Mr. Noren were made pursuant to a corrupt agreement or agreements and constituted bribes offered and accepted.
>
> Bribery, as you know, has been defined as "the corrupt payment or receipt of a private price for official action." Set forth in State v. Canova, 278 Md. 483, at page 485 (1976).
>
> In view of the conclusions I have reached, my verdict is that the Defendant, Judge Allen B. Spector is guilty as charged in Indictment Number 17935501; 17935504; 17935507; Mr. Wyatt is guilty as charged in Indictment Number 17935502; 17935505; 17935508; and that Mr. Noren is guilty as charged in Indictment 17935503; 17935506; 17935509.

We shall develop such additional facts as may be requisite in the course of our discussion of the points raised.

iv. The validity of the indictments

The defendants elected not to challenge the validity of the indictments in the trial court but attempt to do so on appeal. Under Rule 736 a motion asserting a defect in a charging document must be filed within thirty days after the earlier of the appearance of counsel or the first appearance of the defendant before the court "except when discovery

is furnished on an issue which is the subject of the motion, then the motion may be filed within five days after the discovery is furnished." Thus, under the rule the point is deemed waived in the case at bar. There having been no challenge to the validity of the indictments in the trial court, their validity is not before us on appeal. Rule 885.

v. The bill of particulars

We point out that although the appellants suggested in arguments in the trial court that the indictments did not sufficiently inform them of the charges against them, at no time did they mention the constitutional provisions they have raised here.

The demand for particulars alleged that each indictment was "so general as not to give the Defendant sufficient information to prepare a proper defense to the charge." The particulars demanded included the specific official duties or acts of Noren which the

defendants "allegedly influenced or sought to influence by the payment of the alleged bribe"; "[t]he specific influence, which the payment of the aforesaid bribe had or was intended to have upon the official duties of . . . Noren"; "[t]he manner in which the State contends there was any deviation from what it maintains was the proper conduct by . . . Noren of his official duties as any such alleged deviations relates [sic] to the charges contained" in the respective indictments; the identity of "those individuals employed by any governmental agency or unit who had authority with regard to the matters complained of in the indictment concerning the exercise by . . . Noren of his official duties," with an indication as to "the nature of the authority reposed in each such individual and whether that authority was exercised or was to be exercised in any manner in connection with the indictment charged and, if so, in what manner"; the date of the document or documents evidencing the payment of

the sums in question, "stating if the alleged payment was made by check, whose signature appears on the check" together with the identity of the custodian of the document; and the date of the document or documents evidencing the performance or contemplated performance of Noren's official duties allegedly influenced or intended to be influenced by the giving of and his receipt of a bribe together with the identity of the custodian of the document.

The State excepted to the demand. The matter was heard by Perrott, J., to whom the case was then assigned. He directed an answer to the first demand. Accordingly, an amended answer was filed stating:

> 1. Part of the duties of Donald H. Noren, as an Assistant Attorney General assigned to the Department of Health and Mental Hygiene was to represent that Department before the Board of Review which determined whether grounds existed upon which to base the granting of exceptions to any moratoriums handed down by the Department. It was Mr. Noren's duties before the Board of Review that Mr. Spector and Mr. Wyatt influenced or sought to influence.

Exception was again taken. An additional answer was required. Pursuant to that ruling

the State specified:

> 1. That the duties of Donald H. Noren as an Assistant Attorney General for the State of Maryland assigned to the Department of Health and Mental Hygiene include, but are not limited to:
>
> a) representing that Department as counsel before the Board of Review;
>
> b) preparing Stipulations of Fact to be presented before the Board of Review;
>
> c) meeting with aggrieved parties of moratoriums or their counsel;
>
> d) aiding in the preparation of disputes to be presented before the Board of Review; and
>
> e) arguing for the enforcement of all applicable sections of Article 41 of the Annotated Code of Maryland and the Rules of Procedure of the Board of Review.

Again, exceptions were taken upon which the court ruled:

> 1. The State is hereby ordered to strike the words "but are not limited to" in paragraph one of the amended answer;
>
> 2. The defendant's exception to the State's amended answer is otherwise overruled. The court finds that the defendants are not entitled to any further particularization of the duties of Mr. Noren which the defendants, Wyatt and Spector, allegedly sought to influence in this case.

The defendants sought discovery under Rule 741. The State's reply was filed on January 30,

1980. (The exceptions to the demand for particulars were filed on February 4.) The reply included a statement that upon reasonable notice to the State the defendants or their attorneys might "inspect and copy any books, papers, documents, recordings or photographs which the State intends to use at trial; inspect and photograph any tangible objects which the State intends to use at trial; . . . inspect, copy and photograph any item from or belonging to [each] Defendant"; and "inspect and copy all written reports or statements made in connection with this case by each expert consulted by the State." Obviously, among other things this made available to the defendants copies of the checks which were part of the evidence in this proceeding. The State's answer included the names and addresses of thirty-one persons said by the State to be those then "known that the State intend[ed] to call to prove its case in chief or to rebut alibi testimony. . . ." The first three individuals listed were Richard Davison, Samuel

Gorn, and Bernard Rome, the three persons whose cases were allegedly the subject of the bribery.

Appellants place great weight upon Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962), referring to language of Mr. Justice Stewart for the Court, 369 U.S. at 765, to the effect that an indictment not framed to apprise the defendant with reasonable certainty of the nature of the accusation against him is defective, although it may follow the language of the statute. That case is inapposite. The defendants were there indicted pursuant to 2 U.S.C. § 192 for having refused to answer questions "pertinent to the question then under inquiry" by a subcommittee of the United States House of Representatives. No issue of particulars was involved. In fact, Mr. Justice Stewart said for the Court, "[I]t is a settled rule that a bill of particulars cannot save an invalid indictment." Id. at 770. In the second paragraph of the opinion the Court said:

> In each case the indictment returned by the grand jury failed to identify the subject under congressional subcommittee inquiry at the time the witness was interrogated. The indictments were practically identical in this respect, stating only that the questions to which answers were refused "were pertinent to the question then under inquiry" by the subcommittee. In each case a motion was filed to quash the indictment before trial upon the ground that the indictment failed to state the subject under investigation at the time of the subcommittee's interrogation of the defendant. In each case the motion was denied. In each case the issue thus raised was preserved on appeal, in the petition for writ of certiorari, and the brief and argument here. [Id. at 752-53.]

The Court pointed out:

> [T]he very core of criminality under 2 U.S.C. § 192 is pertinency to the subject under inquiry of the questions which the defendant refused to answer. What the subject actually was, therefore, is central to every prosecution under the statute. Where guilt depends so crucially upon such a specific identification of fact, our cases have uniformly held that an indictment must do more than simply repeat the language of the criminal statute. [Id. at 764.]

It was in this context that the Court said:

> For these reasons we conclude that an indictment under 2 U.S.C. § 192 must state the question under congressional committee inquiry as found by the grand jury. Only then can the federal courts responsibly carry out the duty which Congress imposed upon them more than a century ago:
>
> > "The question must be pertinent to the subject matter, and that will have to be decided by the courts of justice on the indictment."[19]
> > [Id. at 771-72.]

The footnote refers to a quotation (369 U.S. at 757) earlier in the opinion in which Senator Bayard, "[t]he principal spokesman for the bill" which enacted the statute in question, was said to have "repeatedly made this very point" on the floor of the Senate when the matter was under consideration as reported in Cong. Globe, 34th Cong., 3d Sess. 440 (1857). In short, Russell is concerned with the validity of an indictment, not with the issue of whether or not a bill of particulars should be granted.

The matter of particulars was discussed for the Court by Chief Judge Prescott in

Hadder v. State, 238 Md. 341, 209 A.2d 70 (1965), where the accused stood convicted of first degree murder:

> Appellant's request asked for a number of items, including one for the particulars as to "the * * * hypothesis of commission" of the crime charged. We assume that this was an expression of a desire to make the State give the defense its theory of the case. All of the particulars requested were furnished except this one, and the appellant, without citing a single authority which states that it is proper to require the prosecution to state its theory of a case under a request for particulars, claims prejudicial error.
>
> The contention misconceives the right, vel non, to, and the function and office of, a bill of particulars. As a general rule, particulars are not granted as a matter of right, but the granting and denial thereof rest in the sound discretion of the trial court, Pearlman v. State, supra; however, the courts of Maryland rightfully have been quite liberal in granting such particulars on proper occasion, and especially when indictments have been drawn in the short forms permitted by statute.
>
> But bills of particulars are intended to guard against the taking of an accused by surprise by limiting the scope of the proof. Berger v. State, 179 Md. 410; Hunter v. State, 193 Md.

> 596. They have never, to our knowledge, been utilized for the purpose of requiring the State to elect a theory upon which it intends to proceed. As the Court succinctly stated in Rose v. United States, 149 F.2d 755 (C.A. 9): "The purpose of a bill of particulars is to secure facts, not legal theories." In United States v. Fruehauf, 196 F.Supp. 198 (U.S.D.C., S.D.N.Y.), the Court named five theories upon which the prosecution might proceed, but denied a motion for a bill of particulars which asked that the Government be required "to state which of the theories it is relying upon and to state, if its claim is based upon any other contention or premise, what such contention or premise is." See also 4 Wharton's Criminal Law & Procedure (Anderson), § 1867; Anno.: 5 A.L.R.2d, at p. 459; United States v. Dilliard, 101 F.2d 829 (C.A.2), cert. den. 306 U.S. 635. We hold that, under the circumstances here involved, the appellant was not entitled to make the prosecution select and state its theory of the case. [Id. at 350-51.]

See also Veney v. State, 251 Md. 159, 163-64, 246 A.2d 608 (1968). In Veney we emphasized the discretionary nature of a grant of particulars. In Pearlman v. State, 232 Md. 251, 192 A.2d 767 (1963), cert. denied, 376 U.S. 943 (1964), cited in Hadder, Judge Horney said for the Court:

> A defendant is not entitled as of right to particulars. Rule 715 a

> provides that on motion by a defendant, the court may order the filing of a bill of particulars. But in most cases the grant or refusal of particulars is within the sound discretion of the trial court. Seidman v. State, supra. And this Court will not reverse a denial of particulars unless there has been a gross abuse of discretion resulting in injury to the accused. Leon v. State, 180 Md. 279, 23 A.2d 706 (1942); State v. Lassotovitch, 162 Md. 147, 159 Atl. 362 (1932); Neusbaum v. State, supra; Lanasa v. State, supra. In general the rule in other jurisdictions is in accord with that in Maryland. See the annotation in 5 A.L.R.2d 444, 447. [Id. at 261.]

To similar effect see McMorris v. State, 277 Md. 62, 70, n. 4, 355 A.2d 438 (1976); Willis v. State, 205 Md. 118, 126, 106 A.2d 85 (1954); Thomas v. State, 173 Md. 676, 197 A. 296 (1938); State v. Lassotovitch, 162 Md. 147, 158, 159 A. 362 (1932); Delcher v. State, 161 Md. 475, 482 158 A. 37 (1932); Avery v. State, 15 Md. App. 520, 530, 292 A.2d 728, cert. denied, 266 Md. 733 (1972), appeal dismissed, 410 U.S. 977 (1973), and Wilson v. State, 4 Md. App. 192, 202, 242 A.2d 194, cert. denied, 251 Md. 753 (1968), cert. denied, 394 U.S. 975 (1969).

Chief Judge Brune observed for the Court in Seidman v. State, 230 Md. 305, 312, 187 A.2d 109 (1962), cert. denied, 374 U.S. 807 (1963), "[A] bill of particulars forms no part of an indictment and hence cannot make an otherwise defective indictment good." In Delcher Judge Pattison said for the Court, "[I]t is . . . well settled that, where the indictment is in the usual form and not demurrable on its face, it does not become so when considered in connection with the bill of particulars." Id. at 482. To similar effect see the passage we have already quoted from Russell, 369 U.S. at 770, and Ayre v. State, 21 Md. App. 61, 63. n. 4, 318 A.2d 828 (1974), citing Seidman. Thus, the argument that without particulars the indictment is void is not a good one both because the indictment was not challenged below as well as the fact that particulars are not taken into consideration in determining the validity of an indictment.

Twice in their argument in their brief relative to the bill of particulars the appel-

lants suggest that without that which they demanded they are unable to protect themselves against double jeopardy. This is not correct. In Cunningham v. State, 190 Md. 578, 59 A.2d 337 (1948), Judge Collins said for the Court in the context of a contention that an indictment for bribery using the words of the statute "violated fundamental requirements of certainty in criminal pleading, to enable preparation of a defense and to permit a plea of former jeopardy":

> At the trial of the cases under these indictments it was necessary for the State to prove the charges. If the accused were again charged with the same offenses, by producing the records in these cases he would be able to plead the judgments in any subsequent attempted prosecution. [Id. at 585.]

This is no less true here. In fact, it is interesting to note that in Russell the Supreme Court reached a similar conclusion stating:

> Since the indictments set out not only the times and places of the hearings at which the petitioners refused to testify, but also specified the precise questions which they then and there refused to answer, it can hardly be doubted

> that the petitioners would be fully protected from again being put in jeopardy for the same offense, particularly when it is remembered that they could rely upon other parts of the present record in the event that future proceedings should be taken against them. [Id. 369 U.S. at 764.]

In United States v. Schembari, 484 F.2d 931, 934 (4th Cir. 1973), there was a contention "that the trial court erred in denying [the] motion [of the accused] for a more definite statement . . . to the extent that he was refused an exact description of those actions which allegedly constituted his offense." The court said it construed this "as a motion for bill of particulars under Rule 7(f) F.R. Crim. P." Judge Murray responded for the court, "Because we believe that the underlying objectives of a Rule 7(f) motion were fully satisfied by the government's voluntary disclosure of its file, we can find no abuse of the trial judge's discretion. See United States v. Sullivan, 421 F.2d 676 (5th Cir. 1970)." Id. at 935.

Here, too, as we have already noted, there was a voluntary disclosure of its file by the

State. The answers filed by the State in response to the demands of the defendants for discovery included listing the names and addresses of all witnesses the State proposed to call, among whom were the three individuals whose applications before the board were involved in the alleged bribery scheme here. The indictments set forth the approximate dates and amounts of each payment. The file which the defendants were privileged to examine would have revealed the checks in the amounts of the alleged bribes. The particulars specified the duties of Noren. We find no abuse of discretion by the trial court in denying the motion for particulars.

vi. The need to prove the official duty or duties or act or acts of Noren

The law of bribery, both at common law and by statute, was extensively discussed by Judge Orth for the Court in State v. Canova, 278 Md. 483, 485-93, 365 A.2d 988 (1976). See also 2 J. Bishop, Criminal Law § 85 (9th ed.

1923); 2 H. Brill, Cyclopedia of Criminal Law § 1206 (1923); Clark & Marshall, A Treatise of the Law of Crimes § 14.02 (7th ed. Barnes 1967); L. Hochheimer, Crimes and Criminal Procedure § 400 (2d ed. 1904); R. Perkins, Criminal Law 469 (2d ed. 1969); and 3 Wharton's Criminal Law and Procedure 1380 (Anderson 1957 and 1979 Supp.). In Canova Judge Orth observed for the Court:

> In Blondes v. State, 16 Md. App. 165, 184, 294 A.2d 661 (1972), the Court of Special Appeals said that Art. 27, § 23 is not " . . . more all inclusive than common law bribery." The court observed that upon a literal reading of the constitutional mandate set out in Art. III, § 50, " . . . no directive was given that the offense of bribery be provided for by statute; rather it directed legislative enactment of a statute to punish that common law crime. . . ." Id. at 182. It found that the statute was declaratory of the common law. We agree that the statute embodies the basic elements of the common law without extending its boundaries to persons outside the ambit of the common law. With respect to the bribe-giver or briber, the statute now in effect speaks of "any person," and like the common law, anyone not entirely without criminal capacity, see Matter

> of Davis, 17 Md. App. 98, 100, 299 A.2d 856, 858 (1973), may be a briber. With respect to the bribe-taker or bribee, however, the statute designates classes, and only a person within one of those classes is a potential bribee. [Id. at 490-91.]

It is conceded that Noren comes within the list of persons enumerated in the statute.

Appellants place their principal reliance upon United States v. Arthur, 544 F.2d 730 (4th Cir. 1976), and United States v. Brewster, 506 F.2d 62 (D. C. Cir. 1974). In Arthur the accused was the president, a member of the board of directors, and a major stockholder in a small national bank. He was indicted under 18 U.S.C. § 656 which makes it unlawful for an officer or director of any national bank to embezzle, abstract, purloin or willfully misapply "any of the moneys, funds or credits of such bank. . . ." He received funds from an account which apparently contained the bank's profit from the sale of credit life insurance in connection with its loan operations. He said he used the money

thus obtained to entertain, do favors, and buy gifts for state and party officials who might be influenced in securing government deposits for the bank. It was the government's position that this testimony, if believed, disclosed the use of bank funds to pay unlawful bribes and to make illegal political contributions which would constitute a misapplication of the funds in violation of the statute in question. The court observed, "Not every gift, favor or contribution to a government or political official constitutes bribery. It is universally recognized that bribery occurs only if the gift is coupled with a particular criminal intent," citing cases. Id. at 734. Referring to Brewster, it stated, "'Bribery' imports the notion of some more or less specific quid pro quo for which the gift or contribution is offered or accepted." Id. It further said:

> This requirement of criminal intent would, of course, be satisfied if the jury were to find a "course of conduct of favors and gifts flowing" to

> a public official in exchange for a pattern of official actions favorable to the donor even though no particular gift or favor is directly connected to any particular official act. United States v. Baggett (4th Cir. 1973) 481 F.2d 114, cert. denied 414 U.S. 1116, 94 S.Ct. 850, 38 L.Ed.2d 744 (1973) (Travel Act prosecution involving alleged bribery of Maryland County Commissioner). Moreover, as the Seventh Circuit has held, it is sufficient that the gift is made on the condition "that the offeree act favorably to the offeror when necessary." United States v. Isaacs (7th Cir. 1974) 493 F.2d 1124, 1145, cert. denied 417 U.S. 976, 94 S.Ct. 3183, 41 L.Ed.2d 1146 (1974) (construing Illinois statute in a Travel Act prosecution). It does not follow, however, that the traditional business practice of promoting a favorable business climate by entertaining and doing favors for potential customers becomes bribery merely because the potential customer is the government. [Id. at 734 (emphasis in original).]

It further said, after reference to the West Virginia statute "which [it said,] reduced to essentials, provides that bribery is the payment or acceptance of '[a]ny pecuniary benefit as consideration for the recipient's official action as a public servant or party

official . . .' (Emphasis added)":

> The crucial distinction between "goodwill" expenditures and bribery is, then, the existence or nonexistence of criminal intent that the benefit be received by the official as a quid pro quo for some official act, pattern of acts, or agreement to act favorably to the donor when necessary. [Id. at 735.]

It found that the trial court had erred in its instruction on bribery because it failed "to set forth that distinction with sufficient clarity to enable to jury to determine the legality of appellant's expenditures" by its

> instructions that "payment of money to Government officials for the purpose of obtaining deposits of government funds in the bank and to influence the judgment of such officials in connection with such deposits . . . constitutes . . . bribery . . . ." If "influence" is given its broadest common meaning, it is clear that "goodwill" gifts and favors to and entertainment of government officials are intended to influence the judgment of such officials. That is, such expenditures are made with the hope that the officials will be more likely to award government business to the donor if a favorable business climate is created than if such a climate is not es-

> tablished. But, as is apparent from the discussion above, this type of influence does not amount to bribery. [Id. at 735.]

We had occasion to review Brewster in Attorney Grievance Com. v. Brewster, 280 Md. 473, 374 A.2d 602 (1977). We pointed out that Senator Brewster was indicted and charged with five counts of bribery in violation of 18 U.S.C. § 201 (c)(1). It defines bribery relative to a public official as follows:

> (c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:
>
> (1) being influenced in his performance of any official act
>
> . . . .

The dismissal of the indictment on constitutional grounds was reversed in United States v. Brewster, 408 U.S. 501, 92 S.Ct. 2531, 33 L.Ed.2d 507 (1972). The case then went to trial on three counts of the original bribery indictment. The jury found him not guilty of

bribery but guilty of what the trial judge held to be the lesser included offense of receiving an illegal gratuity in violation of 18 U.S.C. § 201 (g). The D. C. Circuit reversed, holding that the trial judge failed to adequately instruct the jury on the distinction between the acceptance of an illegal gratuity and the acceptance of political campaign contributions. In the course of that opinion the court said:

> To accept a thing of value "in return for: (1) being influenced in [the] performance of any official act" (section (c) (1), emphasis supplied) appears to us to imply a higher degree of criminal intent than to accept the same thing of value "for or because of any official act performed or to be performed" (section (g)). Perhaps the difference in meaning is slight, but Congress chose different language in which to express comparable ideas. The bribery section makes necessary an explicit quid pro quo which need not exist if only an illegal gratuity is involved; the briber is the mover or producer of the official act, but the official act for which the gratuity is given might have been done without the gratuity, although the gratuity was produced because of

> the official act. [Id. 506 F.2d at 71-72.]

It is this language upon which appellants rest their contentions here.

There is no marked difference between our bribery statute and the federal statute. However, in Maryland we have no statute concerning illegal gratuities. The view of a United States Court of Appeals that the federal statute requires a quid pro quo, although persuasive, is in no way binding upon us in our determination as to whether the Maryland statute requires such.

In United States v. Baggett, 481 F.2d 114 (4th Cir. 1973), the accused was indicted for a violation of the Travel Act, 18 U.S.C. § 1952 and 18 U.S.C. § 2. The Travel Act is significant because it makes unlawful use of any facility in interstate commerce, including the mails, with intent, among other things, to carry on any unlawful act. In § 1952 b "unlawful activity" is defined as including "bribery in violation of the laws of the State in which

committed." Baggett had been a county commissioner of Prince George's County from 1954 until his resignation in 1970. From 1964 until his resignation he was chairman of that board which, as the Fourth Circuit put it, "had final authority over all zoning matters and proceedings." Id. at 115. He was specifically charged with causing the interstate movement of a check drawn in the District of Columbia by a prosperous builder and developer which check was used in Maryland to purchase a tractor for use on Baggett's farm. It is significant that the Fourth Circuit panel there (which included the author of the opinion in Arthur) said:

> The Government's evidence did not show a specific quid pro quo from Baggett to Rocks in return for the $3500 check. It did show a course of conduct of favors and gifts flowing from Rocks to Baggett.
>
> * * *
>
> The many instances of favors and gifts accepted by Baggett from Rocks and others receiving favorable rulings from the Board of County Commissioners were ample to show Baggett's corruption by the unprincipled greed of a wealthy man and Baggett's preference

> for favors and gifts over his public duty. The jury was clearly authorized to draw the inference and conclusion that the $3500 check represented a payment by Rocks to Baggett for continuing favorable zoning rulings. [Id. at 115.]

In United States v. L'Hoste, 609 F.2d 796 (5th Cir.), cert. denied, U.S. , 101 S. Ct. 104 (1980), the court said it was obliged to determine "what constitutes bribery under Louisiana law." Id. at 807. It pointed out in n. 14 that the Maryland bribery statute "contains wording similar to the Louisiana statute before [that] court." Id. The court said:

> The Louisiana statute does not employ the words "as consideration for" or their equivalent to express the intended purpose of the gift. Employed instead are the words "with the intent to influence . . . conduct." The inquiry under the Louisiana statute, then, is whether the gift is made, not as a quid pro quo for specific action, but with the intent to influence the conduct of the public servant in relation to his position, employment, or duty. We think this latter inquiry is a broader one than the inquiry presented by the West Virginia statute and that Louisiana designates as bribery conduct that

> may well be lawful in West Virginia. The Arthur definition of bribery, having been fashioned in a context inapposite to the one presented in this appeal, is not persuasive, and the district court was correct in rejecting it. [Id. at 807-08.]

The defendants have presented an array of cases which they say support their position. We have examined each and no useful purpose would be served by digesting each of them. Suffice it to say that for various reasons we find the cases not apposite. See, e.g., People v. Megladdery, 40 Cal. App.2d 748, 106 P.2d 84 (1940), cited for the proposition that "the burden on the prosecution was 'to charge and prove that the subject matter upon which the bribe was to operate existed and could be brought before the public officer in his official capacity.'" This statement is from that portion of the opinion where the court was reviewing a challenge to the validity of the indictment. Id. at 782. The next sentence states, "The fact the duty is not specifically conferred upon the officer by statute is immaterial." Id. The second count of the indict-

ment there alleged that Megladdery was "the duly appointed, qualified and acting private secretary to the Governor of the State of California"; that while he was in such position he agreed to receive a bribe "upon an agreement and understanding and with the corrupt intent that [his] opinion and action . . . upon a matter then pending and which might be brought [before him] in his official and public capacity . . . should be unlawfully influenced thereby" in that he "would approve, recommend, obtain and procure for [a named individual] a pardon from the Governor of the State of California and would use his influence to persuade the Governor of the State of California to grant [such] a pardon. . . ." It is instructive to note that the court there said:

> 4. It is next urged that the evidence is insufficient to establish the charge set forth in count two of the indictment. This contention is largely based on the arguments urged in support of the contention that the indictment was defective, and for the same reasons is without merit. In

> addition, respondent points out that Governor Merriam testified that at no time that Megladdery was his private secretary was it ever a part of his duties to investigate, recommend, grant or procure pardons for any person - that it was the duty of another secretary to assist him with pardon applications. Obviously, the official duty of assisting the governor in this regard was imposed on the department of which Megladdery was a member, and, if requested to do so, Megladdery could have performed the work of the secretary assigned to the duty of passing upon applications for pardons. That is all that is required under the above-cited cases. Any other rule would permit public servants to be false to their trust and still escape liability on the highly technical ground that the particular act for which the bribe was solicited, because of inter-department division of work, did not fall within the officer's particular functions, although he could be asked to perform that act at any time. [Id. at 783.]

We agree with the Fifth Circuit in L'Hoste that what is required under our statute, as in Louisiana, is to show the payment involved, "not as a quid pro quo for specific action, but with the intent to influence the conduct of the public servant in relation to his position, employment, or duty [,] . . . [an] inquiry [which] is a broader one than the inquiry presented by the West Virginia statute [in Arthur]

and that [Maryland] designates as bribery conduct that may well be lawful in West Virginia." Id. at 609 F.2d 807-08.

vii. Sufficiency of the evidence

Under Rule 886 when an action has been tried by the lower court without a jury, this Court will review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses. In Pope v. State, 284 Md. 309, 396 A.2d 1054 (1979), Judge Orth said for the Court on the matter of appellate review in a criminal case:

> The appellate court's function "is merely to decide whether there was sufficient evidence, or proper inference from the evidence, from which the trier of fact could properly draw the conclusion of the [accused's] guilt, beyond a reasonable doubt." Brooks v. State, 277 Md. 155, 161-162, 353 A.2d 217 (1976), and cases therein cited. The trial court, as the trier of facts, is

> not only the judge of the witness's credibility, but is also the judge of the weight to be attached to the evidence. (Id. at 327.]

This standard is entirely consistent with that enunciated by the Supreme Court later in the same year in Jackson v. Virginia, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

There was ample evidence to sustain each and every finding of fact made by the trial judge. He was correct in his statement that "each specific incident or detail, in itself, cannot be considered separately. All incidents or details, considered cumulatively, are what matter."

In each instance here we have a developer aggrieved by the sewer moratorium who sought help from Spector who had not represented him previously. In each instance the record discloses virtually nothing done by Spector on behalf of his clients. Money was paid to Spector in each instance promptly after the developers represented by him were successful

before the Board of Review. In each instance the fee was then very promptly shared by Spector with Wyatt and he in turn shared the fee with Noren. The record shows no work of a legal nature done by them on behalf of the clients. The developers had been unsuccessful until they sought help from Spector. There is no rational explanation for the series of events which here took place other than that the sums in question were paid by Spector and Wyatt to Noren to influence him in the performance of his duties as an Assistant Attorney General of Maryland and that the money was received by Noren with the same intent. All of the circumstances here clearly permit the inference of a corrupt intent. We find sufficient evidence to sustain the convictions.

viii. Claimed lack of compliance with Rule 735

Maryland Rule 735 d states:

> If the defendant elects to be tried by the court, the trial of the case on its merits before the court may not proceed until the court determines, after inquiry of the defendant on the record, that the defendant has made his election for a court trial

> with full knowledge of his right to a jury trial and that he has knowingly and voluntarily waived the right. If the court determines otherwise, it shall give the defendant another election pursuant to this Rule.

Relying upon Countess v. State, 286 Md. 444, 408 A.2d 1302 (1979), the defendants contend, "The record in the case sub judice does not disclose an effective compliance with the requirement." They point to the proceedings before the trial judge on the morning of trial (June 5) and say that this "waiver was per se defective because it failed to explain the composition of a jury, as well as the proper standard of proof that a unanimous jury must find in order to convict." On that morning the trial judge started out by saying to Judge Spector that he wished him "again to reaffirm his understanding" of his rights. (Emphasis added.) A similar question was propounded to each of the other defendants. It is acknowledged that a full waiver proceeding was held before the same judge on May 29 but it is contended this "waiver was premature."

The proceeding on May 29 was full and complete in every regard. In fact, Spector, when he was advised, said, "I have given that advice many times myself, Your Honor," referring to his own duties as a judge of the District Court of Maryland.

There is nothing in Countess or in the rule which requires that the inquiry after an election of a court trial be on the very day trial begins. Hence, we find this contention to be without merit.

ix. Conclusion

It follows from what we have said that the judgments against the appellants are to be affirmed.

JUDGMENTS AFFIRMED; APPELLANTS TO PAY THE COSTS.

U.S. CONST. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia. when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been pre-

viously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

U.S. CONST. amend. XIV., §1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MD. DECLARATION OF RIGHTS, art. 21.

That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indict-

ment, or charge, in due time (if required) to prepare for his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

18 U.S.C.A. §201 (West 1969 and Supp. 1980).

(a) For the purpose of this section:

"public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government or a juror; and

"person who has been selected to be a public official" means any person who

has been nominated or appointed; and

"official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent --

(1) to influence any official act; or

(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow,

any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) being induced to do or omit to do any act in violation of his official duty; or

(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee or either House or both Houses of Congress, or any agency, commission or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom; or

(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits,

seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom --

Shall be fined not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former

public official, or person selected to be a public official, or

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or

(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom --

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, involving a

technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in section 1503, 1504, and 1505 of this title.

MD. CODE ANN. art. 27 §23 (Supp. 1980).

If any person shall bribe or attempt to bribe any executive officer of the State of Maryland, any judge, or other judicial officer of this State, any member of officer of the General Assembly of Maryland, any officer or employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation of this State, or any executive officer

of such corporation, in order to influence any such officer or person in the performance of any of his official duties; and if the Governor or other executive officer of this State, any judge, or other judicial officer of this State, any member of the General Assembly of Maryland or officer thereof, any officer or any employee of the State, or of any bi-county or multi-county agency in the State, or of any county, municipality or other political subdivision of the State, including members of the police force of Baltimore City and the State Police or any member or officer of any municipal corporation, or mayor or other executive officer thereof in this State shall demand or receive any bribe, fee, reward or testimonial for the purpose of influencing him in the performance of his official duties, or for neglecting or failing to perform the same, every such person so bribing or attempting to bribe any such officers or person, and every such person so demanding or receiving

any bribe, fee, reward, or testimonial shall be deemed guilty of bribery, and on being convicted thereof shall be fined not less than $100 nor more than $5,000, or, in the discretion of the court, shall be sentenced to be imprisoned in the penitentiary of this State for not less than two nor more than 12 years, or both fined and imprisoned, and shall also be forever disfranchised and disqualified from holding any office of trust or profit in this State; and any person so bribing or attempting to bribe or so demanding or receiving a bribe shall be a competent witness, and compellable to testify against any person or persons who may have committed nay of the aforesaid offenses; provided, that any person so compelled to testify in behalf of the State in any such case shall be exempt from prosecution, trial and punishment for any such crime of which such person so testifying may have been guilty or a participant therein, and about which he was so compelled to testify.

W. VA. CODE §61-5A-3 (1977).

A person is guilty of bribery under the provisions of this section if he offers, confers or agrees to or upon another, or solicits, accepts or agrees to accept from another, directly or indirectly:

(1) Any pecuniary benefit as consideration for the recipient's official action as a public servant or party official; or

(2) Any benefit as consideration for the recipient's official action as a public servant in an administrative or judicial proceeding; or

(3) Any benefit as consideration for a violation of a legal duty as a public servant or party official.

A person is also guilty of bribery under the provisions of this section if he agrees to render official action as a public servant or party or upon, or as consideration for a

promise that a pecuniary benefit shall be offered or conferred to or upon, another person or a party official or a political party. (1970, 2nd Ex. Sess., c. 3).

28 U.S.C. §1257. STATE COURTS; APPEAL: CERTIORARI

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * * * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.